A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.174 of 2007

Appellant (Non-Applicant No.3)	National Insurance Company Limited, Through : Its Divisional Manager, Divisional-Office, Vyapar Vihar Road, B-1 Taha Complex, Ring Road-II, Bilaspur (C.G.)

versus

Respondents (Applicant)	1. Rajendra Mourya, S/o Nandlal Mourya, Chouhan, aged 34 years, R/o Near Gudakhu Factory, Shankar Nagar, Bilaspur, Tah. & Distt. Bilaspur (C.G.)
(Non-Applicant No.1)	2. Rajesh Kumar Soni, S/o Mukundlal Soni, aged 27 years, R/o Near Sitamadhi School, Hatari Chowk, Korba, Distt. Korba (C.G.)
(Non-Applicant No.2)	3. Shyamsun Samuel Masih, S/o Samufi Masih, aged 38 years, R/o M.I.G. 1/8/7 Sharda Vihar Korba, Distt. Korba (C.G.)

Appeal under Section 173 of the Motor Vehicles Act, 1988

Present : Shri Dashrath Gupta, counsel for the appellant.
Shri Goutam Khetrapal, counsel for respondent No.1.

ORAL ORDER

(Passed on 14th August, 2007)

Heard.

(2) The short question, which arises for determination in this appeal by the insurance company, is whether in view of the cancellation of the insurance policy prior to the date of accident upon the cheque for payment of premium issued by the insured having been dishonoured

the IVth Additional Motor Accidents Claims Tribunal, Bilaspur (hereinafter referred to as 'the MACT') was justified in passing an award against the insurance company for payment of compensation while giving it the right to recover the same from the insured.

(3) It is not in dispute in this appeal that on 13-06-2005, the claimant, while going towards his house on a Luna, was dashed by the Bus and suffered grievous injuries. In Claim Case No.15/2006, vide award dated 23-09-2006, the MACT awarded compensation of Rs.58,381/- against the appellant/insurer. The offending vehicle, i.e., Bus No.CG 10 A/4900 (hereinafter referred to as 'the Bus') was driven by respondent No.2, who was also the registered owner thereof. A policy of insurance was issued on 17-01-2005 by the appellant/insurer covering liability to third parties which was to expire on 16-01-2006. Upon dishonour of the cheque dated 17-01-2005 issued by the insured towards premium, the appellant/insurance company had cancelled the policy on 24-01-2005. The quantum of compensation awarded by the MACT is also not in question in this appeal.

(4) Shri Dashrath Gupta, learned counsel for the appellant placed reliance on ***United India Insurance Co. Ltd., Kurnool*** **vs.** ***A. Narayana Reddy and others*****, 2007 (2) TAC 908 (A.P.)** and argued that since the appellant/insurer had, upon dishonour of the cheque issued by the insured for payment of premium, cancelled the policy on 24-01-2005 and the accident had occurred on 13-06-2005, the insurance company was not liable to pay compensation since the policy of insurance was not in existence on the date of accident.

(5) On the other hand, Shri Goutam Khetrapal, learned counsel for respondent No.1/claimant placed reliance on ***Oriental Insurance Co. Ltd.*** **vs.** ***Inderjit Kaur and others*****, (1998) 1 SCC 371** and ***New India Assurance Co. Ltd.*** **vs.** ***Rula and others*****, (2000) 3 SCC 195** while arguing that where the insurance company, despite the bar created by Section 64VB of the Insurance Act, 1938 (hereinafter referred to as 'the Act, 1938') issued a policy of insurance to cover the Bus without receiving the premium therefor, the appellant/insurer became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof under Section 149(1) of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act, 1988') notwithstanding its entitlement to avoid or cancel the policy for the reason the cheque issued in respect of payment of premium had not been honoured.

(6) Having considered the rival submissions and perused the record, I am of the considered opinion that this appeal has no merit.

(7) Chapter 11 of the Act, 1988 provides for the insurance of motor vehicles against third-party risks. Section 146 thereunder states that no person shall use or cause or allow any other person to use a motor vehicle in a public place unless there is in force in relation to the use of the vehicle a policy of insurance that complies with the requirements of the chapter. Section 147 of the Act, 1988 sets out the requirements of policies and the limits of liability. A policy of insurance, by reason of this provision, must be a policy which is issued by a person who is an authorized insurer. Sub-section (5) of Section 147 of the Act, 1988 reads as under :

> **"147. Requirements of policies and limits of liability.** – (1) xxxxx xxxxx xxxxx
>
> (2) xxxxx xxxxx xxxxx xxxxx
>
> (3) xxxxx xxxxx xxxxx xxxxx
>
> (4) xxxxx xxxxx xxxxx xxxxx
>
> (5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of that person or those classes of persons."

(8) Section 149 of the Act, 1988 refers to the duty of insurers to satisfy judgments and awards against persons insured in respect of third-party risks. Sub-section (1) of Section 149 of the Act, 1988 reads as under :

> **"149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.** – (1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy (underlined by

me), the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

(9) Section 64VB of the Act, 1938 reads as under :

"**64VB. No risk to be assumed unless premium is received in advance.** – (1) No insurer shall assume any risk in India in respect of any insurance business on which premium is not ordinarily payable outside India unless and until the premium payable is received by him or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or unless and until deposit of such amount as may be prescribed, is made in advance in the prescribed manner.

(2) For the purposes of this section, in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer.

Explanation. – Where the premium is tendered by postal money order or cheque sent by post, the risk may be assumed on the date on which the money order is booked or the cheque is posted, as the case may be.

(3) Any refund of premium which may become due to an insured on account of the cancellation of a policy or alteration in its terms and conditions or otherwise shall be paid by the insurer directly to the insured by a crossed or order cheque or by postal money order and a proper receipt shall be obtained by the insurer from the insured, and such refund shall in no case be credited to the account of the agent.

(4) Where an insurance agent collects a premium on a policy of insurance on behalf of an insurer, he shall deposit with, or despatch by post to, the insurer, the premium so collected in full without deduction of his commission within twenty-four hours of the collection excluding bank and postal holidays.

(5) The Central Government may, by rules, relax the requirements of sub-section (1) in respect of particular categories in insurance policies.

(6) The Authority may, from time to time, specify, by the regulations made by it, the manner of receipt of premium by the insurer."

(10) Upon a minute perusal of the above provisions, it transpires that Section 64VB of the Act, 1938 is in the shape of a legislative injunction upon an insurer not to assume any risk in respect of any insurance until the premium payable is received by it or is guaranteed to be paid by such person in such manner and within such time as may be prescribed or until deposit of such amount as may be prescribed is made in advance in prescribed manner. Where the appellant/insurer, despite

the bar created by Section 64VB of the Act, 1938, issued a policy of insurance to cover the Bus without receiving the premium therefor, the appellant/insurer, by reasons of the provisions of Sections 147(5) and 149(1) of the Act, 1988, became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued for payment of premium had not been honoured. The words "the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments" and "notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy" appearing in sub-section (1) of Section 149 of the Act, 1988 clearly indicate the mandate that once the certificate of insurance has been issued by the insurer under sub-section (3) of Section 147 of the Act, 1988 in favour of the person by whom the policy has been effected despite compliance of sub-section (1) of Section 64VB of the Act, 1938, then as regards the liability towards third parties is concerned, the insurance company shall be liable notwithstanding that it may be entitled to avoid or cancel or may have actually avoided or cancelled the policy of insurance. The policy of insurance that the appellant/insurer issued was a representation upon which the authorities and third parties were entitled to act and, therefore, the appellant/insurer was not absolved of its obligations towards third

parties under the policy of insurance merely because it did not receive the premium. Its remedies in this behalf lay against the insured.

(11) In ***Oriental Insurance Co. Ltd.*** **vs.** ***Inderjit Kaur and others*** (supra), in similar circumstances, it was held that it was the appellant itself, who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64VB of the Act, 1938. The public interest that a policy of insurance serves must, therefore, clearly prevail over the interest of the appellant. Therefore, in view of the provision contained in sub-section (1) of Section 149 of the Act, 1988 as regards the liability of the insurance company towards third parties is concerned, it is wholly immaterial whether the policy of insurance once issued by the insurance company was cancelled prior to or after the accident.

(12) In ***Oriental Insurance Co. Ltd.*** **vs.** ***Inderjit Kaur and others*** (supra), the policy of insurance was issued on 30-11-1989 after the cheque issued by the insured towards premium was dishonoured on 23-01-1990. A letter stating that the cheque had been dishonoured was sent by the insurer to the insured. It also stated that the insurer had ceased to cover the risk on account of dishonour of the cheque. The premium was paid in cash on 02-05-1990. However, in the meantime, on 19-04-1990, the accident took place in which due to collision of the Bus with a Truck, the driver of the Truck died. Applying the above principle, the Apex Court held that the insurance company was liable to indemnify third parties in respect of the liability which the policy of insurance had covered and to satisfy awards of compensation.

In this manner, the case of ***Oriental Insurance Co. Ltd.*** vs. ***Inderjit Kaur and others*** (supra) is similar to the present one. In ***New India Assurance Co. Ltd.*** vs. ***Rula and others*** (supra), facts were slightly different. The policy of insurance of the Truck was issued on 08-11-1991. The Truck met with an accident on the same day at midnight. Three occupants died. Cheque issued by the insurer for payment of premium was dishonoured on 16-11-1991 with the result that the policy of insurance was cancelled. Placing reliance on ***Oriental Insurance Co. Ltd.*** vs. ***Inderjit Kaur and others*** (supra), the Apex Court held as under :

> **"13.** This decision, which is a three-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the policy on the date on which the accident took place. If, on the date of accident, there was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company and the owner of the vehicle would have to be indemnified in respect of the claim of that party. Subsequent cancellation of the insurance policy on the ground of non-payment of premium would not affect the rights already accrued in favour of the third party."

(13) Shri Dashrath Gupta, learned counsel for the appellant has placed heavy reliance on the words "If, on the date of accident, there

was a policy of insurance in respect of the vehicle in question, the third party would have a claim against the Insurance Company" appearing in para 13 quoted above and argued that the ratio of the decision in ***New India Assurance Co. Ltd.*** vs. ***Rula and others*** (supra) is that in order to make the insurance company liable, there has to be a policy of insurance in existence on the date of accident. I am unable to agree with the arguments advanced by learned counsel for the appellant. The ratio of the decision in ***New India Assurance Co. Ltd.*** vs. ***Rula and others*** (supra) is akin to the ratio of the decision in ***Oriental Insurance Co. Ltd.*** vs. ***Inderjit Kaur and others*** (supra). In ***New India Assurance Co. Ltd.*** vs. ***Rula and others*** (supra) the policy of insurance had been cancelled subsequently after the accident occurred. A letter of the cancellation of the policy of insurance was issued after the accident. In this context, the Apex Court had used the words "if, on the date of accident, there was a policy in respect of the vehicle in question". The Apex Court was not laying down the law that if the policy of insurance was cancelled prior to the date of accident, the liability of the insurance company towards third parties would cease to exist. The words "This decision, which is a three-Judge Bench decision, squarely covers the present case also. The subsequent cancellation of the insurance policy in the instant case on the ground that the cheque through which premium was paid was dishonoured, would not affect the rights of the third party which had accrued on the issuance of the policy on the date on which the accident took place." clearly support the above inference drawn by me.

(14) In view of the law laid down by the Apex Court in ***Oriental Insurance Co. Ltd.*** vs. ***Inderjit Kaur and others*** (supra) and ***New***

India Assurance Co. Ltd. **vs.** ***Rula and others*** (supra), I find myself unable to fall in line with the case law of ***United India Insurance Co. Ltd., Kurnool*** **vs.** ***A. Narayana Reddy and others*** (supra) cited by learned counsel for the appellant.

(15) I am of the considered opinion that the impugned order passed by the MACT awarding compensation against the appellant/insurer and giving it the right to recover it from the insured by initiating execution proceedings is in conformity with the law laid down by the Apex Court in ***Oriental Insurance Co. Ltd.*** **vs.** ***Inderjit Kaur and others*** (supra) and ***New India Assurance Co. Ltd.*** **vs.** ***Rula and others*** (supra). No interference is, therefore, called for with the impugned award. The appeal is accordingly dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal